STATE OF MINNESOTA
COUNTY OF RAMSEY
- -
THE STATE OF MINNESOTA,
BY HUBERT H. HUMPHREY, III,
ITS ATTORNEY GENERAL,
and
BLUE CROSS AND BLUE SHEILD
OF MINNESOTA
Plaintiffs,
-vs- Case File No. C1-94-8565
PHILIP MORRIS INCORPORATED,
R.J. REYNOLDS TOBACCO COMPANY,
BROWN & WILLIAMSON TOBACCO CORPORATION,
B.A.T. INDUSTRIES P.L.C.,
BRITISH-AMERICAN TOBACCO COMPANY LIMITED,
BAT (U.K. & EXPORT) LIMITED,
LORILLARD TOBACCO COMPANY,
THE AMERICAN TOBACCO COMPANY,
LIGGETT GROUP, INC.,
THE COUNCIL FOR TOBACCO RESEARCH - U.S.A.,
INC., AND THE TOBACCO INSTITUTE, INC.
Defendants
- -
DEPOSITION OF LIGGETT GROUP (STEVEN D. SHIPE)
STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

http://legacy.library.ucsf.edu/tid/djn05a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/pxhd0001

(The following is the deposition of Liggett Group (STEVEN D. SHIPE), taken pursuant to the Second Amended Notice of Taking Deposition, at the offices of Dorsey & Whitney, 250 Park Avenue, 16th Floor, New York, New York, commencing at approximately 12:00 o'clock p.m., September 29, 1997.)

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THE REPORTER: We are on the record.

STEVEN D. SHIPE

having been first duly sworn by the Court Reporter, was examined and testified as follows:

CROSS EXAMINATION

BY MR. SILBERFELD:

Q. Would you state your full name for the record, sir.

A. Steven D. Shipe.

Q. And Mr. Shipe, by whom are you employed, sir?

A. Liggett Group, Incorporated, which is a subsidiary of Brook Group, Limited.

Q. And what is your position with Liggett Group?

A. I'm presently the president of our southern business unit and a corporate vice president.

Q. And what is the southern business unit, Mr. Shipe?

A. Effective January 1 of this year, Liggett Group went through a reorganization of its sales and marketing departments whereby -- excuse me -- it created four unique business units, three

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of which are sales and marketing-related. The fourth one is a -- a manufacturing business unit.

Each of the business units is headed by a separate president, and I'm president of one of the sales and marketing business units.

Q. And from the name of the business unit, I gather that it refers to a particular geographic territory?

A. That's correct. It's actually based in Durham. Our office is based in Durham, and it encompasses approximately 21 states, not all truly defined by the "South," but we do go up and cover Minnesota and the Dakotas in our business units.

Q. That's definitely not the South last time I looked.

Have you ever had your deposition taken before, sir?

A. No, I haven't.

Q. Okay. Let me, in the interest of clarity, go over some of the ground rules we're going to follow here today.

You notice there's a camera here and you're wearing a microphone. Your testimony is being recorded for purposes of having this

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testimony played to the trial -- the jury in this case when the case goes to trial, and even though we are gathered in fairly informal surroundings here, the testimony has the same force and effect as if you were sitting on a witness stand in a courtroom in Minnesota right now.

You understand that, don't you?

A. Yes.

Q. And the oath you've taken is the same oath you would take if you were testifying in a court of law; you understand that?

A. Yes.

Q. In order to have a clear record of what we are doing here today, I would like to just mention a couple of the ground rules to you.

One of them is that both the reporter, who is recording this and making a written transcript, as well as the audio and perhaps even the video, can really only clearly take down one of us talking at a time, and so what I would ask you to do is to pause briefly at the end of my question before you begin your answer, and I'll try to do the same thing.

It's often difficult to do, because as to many of these questions, I think you'll know

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where my question is leading and you may want to sort of start your answer early.

If you do that, it will cause the transcript to be somewhat jumbled, so I would ask you to see if you could just pause for a second before you begin.

If I ask you any question which you don't understand, please don't answer that kind of a question. Instead, tell me that it's not clear to you and I'll try to clarify the question and make it clear to you, so that in each and every instance, if you've answered a question, we can assume that you have at least understood the question; is that fair?

A. That's fair.

Q. Okay. Any questions about the process that we are going to follow here today?

A. No.

Q. You've had a chance to talk to counsel briefly about what a deposition is and what giving testimony is all about?

A. Yes.

Q. All right, fine.

How long have you been with Liggett, all totaled?

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A. Since 1980.
Q. And prior to 1980, what type of work did you do, if any?
A. That was -- Liggett was really my first what I would call full-time career position.
Q. Okay. Everything else was part-time jobs, school-related, and so forth?
A. Yes.
Q. And in 1980 when you joined Liggett, what was your position with the company first?
A. I began as a sales representative in Columbus, Ohio.
Q. And as a sales rep in Columbus, what were your duties and responsibilities?
A. Primarily, as a sales representative, it was upon my duties to have a set route where I called on both receipt establishments selling cigarettes, as well as wholesalers or distributors that would service those retailers with cigarettes.
MR. SILBERFELD: Okay. May we go off the record one second?
(Discussion off the record.)
THE COURT REPORTER: We are on the

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record.
BY MR. SILBERFELD:
Q. Mr. Shipe, how long were you a sales rep in the Columbus, Ohio area?
A. For approximately three years.
Q. And after that time, roughly in 1983, what did your job become?
A. I became a key account manager for our generic cigarette division based in Milwaukee, Wisconsin.
Q. And how long did you have that job?
A. Approximately, one year.
Q. And what were your duties and responsibilities there?
A. In that response -- in those -- in that role, my responsibilities were mainly dealing with just our generic and private-label cigarettes, as opposed to our branded or premium cigarettes, and it covered approximately a six-state area calling on primarily wholesalers or distributors of those cigarettes.
Q. In the middle '80s when you had this job, about how many generic and private-label brands was Liggett involved with?
A. We probably had approximately 25 to

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30 different trademarks that we sold under.

Q. And when you used the terms "generic" and "private label," do you mean for those to refer to different things?

A. Yes. Generic --

Q. What's a "generic"?

A. "Generic" would be primarily a black-and-white or no-name cigarette.

"Private-label" would indicate a brand where the trademark for that cigarette was actually owned by the customer, and Liggett would primarily provide a contract manufacturing service, but would have no ownership of the trademark.

Q. So, in the private label context, Liggett would make cigarettes for others?

A. That's correct.

Q. In the generic context, Liggett would make cigarettes for itself, but they would not be the brand names, such as L&M and Chesterfield, and so forth, they would be generic brands?

A. That is correct.

Q. Of the 25 or 30 that you mentioned, how many were generic and how many were private

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label, roughly?
A. I would say roughly 4 to 5 of the brands were generic and probably close to 20 of the brands were private label.
Q. Okay. After this job as a key account manager, what was your next job with Liggett?
A. I was a district sales manager, again now working all Liggett brands, not just the generic and private-label brands, and had responsibility for managing sales representatives in -- approximately, just a one-state area.
Q. Which state was that?
A. Indiana.
Q. And approximately how many sales representatives reported to you in that time?
A. It varied; on average, probably about seven full-time representatives and 15 to 20 part-time people occasionally.
Q. How long did you have that job?
A. Had that job for six years until 1990.
Q. And what was your next job after that?
A. In 1990, I moved into our corporate

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offices in Durham, North Carolina, and held the position of product manager in our marketing department.

Q. And as product manager, what were your duties and responsibilities?

A. My main duties and responsibilities in that position dealt with working with our field sales organization and helping them implement sales promotions.

I also worked to some degree with our advertising agencies on more of the technical side insuring that ads became ready for production and ran as scheduled.

Q. And was this a nationwide responsibility?

A. Yes, it was.

Q. And how long did you have that job?

A. Approximately, two years.

Q. And what happened jobwise in 1992 or thereabouts?

A. Roughly in 1993, I was given the job of director of sales promotions, which was a new position in the company at the time.

Q. What did that involve?

A. In many ways, it had some of the

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same responsibilities I had as product manager, the difference being, I focused more on working with the sales side of the business and slightly less on the marketing side.

Q. And how long did you have that job, sir?

A. Approximately, a year.

Q. Again, that was a nationwide responsibility?

A. That is correct.

Q. And roughly in 1994, what job did you take?

A. I was then given the position of director of marketing for the company, and actually, I think it was 1995, so I probably held the previous position closer to two years.

Q. Okay. And as the director of marketing, what were your duties and responsibilities?

A. Duties and responsibilities in that position on a national basis was to oversee everything that was marketing-related with our organization, whether it be advertising or sales promotion.

Q. Other than advertising and sales

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promotion, were there any other aspects to marketing during the time that you were the director of marketing?

A. The only other area would be in the package development side of new brand introductions.

Q. What aspect of package development?

A. For the most part, the -- approving the final design and insuring that the packaging materials were available in time to meet production schedules.

Q. All right. And how long were you the director of marketing?

A. Until January of 1996.

Q. '96?

A. Uh-huh.

Q. And what happened in '96?

A. In January of 1996, I was promoted to vice president of marketing.

Q. Did your duties and responsibilities change?

A. Yes, to the degree that I became more involved in -- in the overall corporate business aspects of the organization, as well as just the marketing aspects.

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Q. When you say "corporate business aspects," what are you referring to?
A. As vice president, I was an officer in the company, and at that point was involved in strategic decisions as far as things outside of marketing, i.e., sales programs and personnel decisions, things of that nature.
Q. And I take it you had that job for about a year and then you became president of the southern business unit?
A. That's correct.
Q. All right. Let me return for a minute to your three-year stint as a sales representative in Columbus, Ohio.
During that time, you called on both retail purchasers of Liggett products, as well as wholesalers that were distributing Liggett products?
A. That's correct.
Q. And did you come to learn from that experience that other cigarette companies also had sales representatives calling on the same retail customers and perhaps even the same distributors as you were calling on?
A. Yes.

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Q. Are you familiar with the term "racking fees"?
A. I'm familiar with the term "shelving payments," which is probably synonymous for "racking fees."
Q. All right. What's a shelving payment?
A. Shelving payment would be a program that a company would have that in return for a -- a set amount of space on a cigarette fixture a retailer would be paid a monthly fee for giving that space to a particular company.
Q. From a sales perspective, is the visibility of the product within a retail establishment a matter of some importance?
A. I think the -- what's important is from the standpoint of where I was concerned with Liggett, that my products would be as visible as other products in the store.
Q. Visibility is really what I was driving at.
What did you on behalf of Liggett in this time frame in the '80 to '83 period --
A. Uh-huh.
Q. -- do to try to insure that Liggett

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products were at least as visible as those of your competitors?

A. During that period of '80 to '83 that I worked, we had a shelving program, which compensated retailers in return for keeping Liggett brands in distribution and keeping Liggett brands on a fixture that was self-serviceable by the consumer.

Q. Was that shelving program premised on Liggett products having at least as much prominence to the customer who comes in as the products of your competitors?

A. It was -- it was based on our brands having the same degree of, I guess, self-serviceability.

Obviously, cigarette fixtures are different rows, different shelves, different number of facings.

Liggett, by being the smallest company, obviously would not demand or need the same number of facings as a much larger company.

Q. You've used a term of art I would like you to define, and that is the word "facings."

What does that mean?

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A. "Facings" would be as a cigarette is displayed on a fixture, normally, what's visible as the end panel of the carton. One end panel would denote a facing of that brand.

Q. Okay. And were you aware during this time frame that your competitors were also making shelving payments to retailers that you were visiting?

A. Yes, I was aware of that.

Q. And did you understand whether Liggett had a shelving program that was nationwide?

A. We had a shelving program that was nationwide, yes.

Q. Do you know if your competitors also had shelving programs that were nationwide?

A. In my -- I would -- I would know the programs that they had in my market area, I would make an assumption that it was nationwide. Whether or not it was the same program nationwide, I wouldn't know.

Q. In terms of all of the jobs you have had up to the present, have you gained an understanding that your competitors had shelving programs, whether or not they were the same throughout the country, they had them nationwide,

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did they not?
A. Yes.
Q. In Columbus, Ohio, back in the 1980 to '83 time frame, was Liggett in terms of the payments made to retailers competitive with the other companies they competed with, such as RJR or Philip Morris?
A. I'm not sure I understand to say what competitive --
Q. How much would you pay a retailer a month in a convenience store?
A. Our payments would never be as much on a monthly basis as our competition, and that was due mainly again to our small share of market versus competition.
Q. And was it based on how much space you actually got?
A. Correct.
Q. And was there a price per shelf or a price per square inch? How was that done?
A. Well, again, I can speak to a -- Liggett's programs were developed where it was based on a combination of a per-row amount, and also paid based on a retailer's volume of cigarettes that he sold, so the most payments or

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the most money went to the store -- stores that did the most volume and gave you the most available rows.

Q. In terms of qualifying for participation in the program, were retailers obligated to carry the full line of Liggett brands?

A. No.

Q. They could carry some, but not all?

A. They could -- we -- again, the program has changed over the years.

Q. Yeah. I'm talking about in the '80s?

A. In '80-83, we had a variable number of rows, and it was up to the local sales representative to determine what were the best brands to put in that space based on brands that sold in that area.

Q. In this same time frame, other than the shelving payment, were there any other fees paid to retailers in some other type of program to encourage the stocking, and ultimately, the sale of Liggett products?

A. The only other program that would be available would be if we had regular sales promotions, and some stores would allow you to set

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what I'll call a free-standing display of cigarettes with a promotion, and occasionally, some stores required a payment for the space that that display took up, and Liggett would have funds available to meet those needs of those retailers.

Q. Did your competitors in this time frame do the same thing?

A. I don't have any direct knowledge that they did. I would assume that they had similar programs.

Q. Turning from retailer to wholesaler or distributor, were there in the period 1980 to '83 special programs or incentives for wholesalers with respect to Liggett products?

A. The only special programs during that time that I can recollect is if we had a new brand introduction, occasionally, there would be a program for wholesalers that would offer them a rebate on their first purchases of the product to give them an incentive to help get the brand into distribution.

Q. Other than that example, can you think of any others that would result in any form of payment or incentive to a wholesaler or a distributor?

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A. There on our generic side of our brands, there were some normal rebate programs where they had volume quotas, and upon obtaining certain volume quotas, they would be paid a rebate.

Q. Now, Mr. Shipe, you've been designated as a person most knowledgeable about two topics here today.

Do you understand that, sir?

A. Yes.

Q. And in giving testimony, really, from here on out, because so far, we have been just talking about "you," you'll be speaking on behalf of Liggett.

Do you understand that?

A. I understand that.

Q. And the two topics we're going to spend a little time today talking about are advertising and youth or youth marketing, all right?

Do you understand that?

A. I understand that.

Q. Tell me what you have done to prepare yourself and become knowledgeable about these two topics.

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A. Primarily, I was given some documents from my attorneys for review and have taken the opportunity to review those.

I have also reviewed the information that I had from my years at Liggett.

I'm just -- kind of gone back and refreshed my memory of what positions I have had, redefined some of my roles and responsibilities to make sure I was understanding what those were.

Q. Anything else?

A. No.

Q. From the review of documents provided to you by counsel, did you gain an understanding, coupled with your own experience, as to what Liggett's policy has been over time with respect to advertising?

A. I would say I have gained probably a better understanding of some of the issues and some of the advertising history of Liggett prior to reviewing those documents.

Q. And what was the time period that you looked at that frames that history?

A. I believe most of the documents, the earliest ones were probably early '60's to probably early to mid-70s.

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I believe there were some transcripts of some television shows back in the mid-50s.

Q. Perry Como?

A. Yes.

Q. We'll talk about that. Any other documents that you recall specifically other than the television transcripts?

A. There were some documents relating to Cigarette Advertising Code, and there were some documents regarding some -- some Lark advertising that Liggett back in the late '60s/early '70s was looking at.

Q. Did you look at any copies of ads that Liggett had run over time?

A. There were -- I do believe there were a few L&M ads, and again, time frame might have been late '50s/early '60s.

Q. Any other categories of documents you've looked at, other than the ones you just described to me?

A. Nothing in broad terms. That covers it.

Q. Did Liggett adopt voluntarily some limitations on how it would advertise its

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cigarette products?

A. I believe, it's my understanding that back in the mid to late '60s and into the early '70s, that the information regarding the Cigarette Advertising Code when it was formed, Liggett did, while it was a member of that, adhere to the policies that that code put forward, and I believe after the Liggett withdrew from the code, that they maintained a -- a -- like a say, a limit on the types of advertising. There were the structure of the ads that they went forward with voluntarily.

Q. Let's just cover the Cigarette Advertising Code time frames, and then we'll talk about some of the documents in a little bit.

The Cigarette Advertising Code was created sometime in the early to mid '60s; is that your recollection?

A. I believe that's correct.

Q. And Liggett was a member of the Cigarette Advertising Code or a -- or a company that agreed to it, along with others, from the beginning?

A. I can't honestly say I know it's right from the beginning. I know for a period of

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time, they were part of it.
Q. And Liggett resigned from the Cigarette Advertising Code at some point in time, did it not?
A. I believe that is correct, based on the information I saw.
Q. I interrupted you, and I apologize.
Do you recall the year or the decade that that occurred, the resignation?
A. Plus or minus a year. I think it was close to around 1969 or 1970.
Q. And after that time, notwithstanding its resignation from the code, Liggett, nevertheless, continued to voluntarily limit or restrict the form or content of some of its advertising; is that your recollection?
A. The only thing I know is based on information I saw, there was one document where in discussing Liggett's resignation from the code, I believe it was the then vice president of Liggett's marketing, stated that even though they were going away from the Cigarette Advertising Code, I believe there was a quote in there, something to the effect that, "This doesn't mean

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we're going back to advertising the way we did before the code," so I'm going to assume that, based on that statement, that there was an assumption made by the people in charge then that they were going to have some voluntary restraints in their advertising programs going forward.

Q. From what you've read, is it your understanding that the Cigarette Advertising Code, although formalized, was also a voluntary decision by Liggett and other companies?

A. I believe that would be correct.

Q. From the documents you've looked at and from drawing on your own experience, as well, what is the purpose of cigarette advertising by Liggett?

A. Cigarette advertising from Liggett's perspective is two-fold; one, it's to attempt to keep and retain its current smokers that it has on its brands, and two, to try to get smokers of competitive brands to switch to smoke Liggett brands.

Q. Are those, to be sort of simple about it, two sides of the same coin, in terms of the goals of advertising?

A. Well, yes and no. I think it is

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from the standpoint of advertising, in general, I think with cigarettes, one of the things we do is, obviously, we look at our brands and develop advertising based on, you know, those brands' strengths and weaknesses, so to speak.

Q. And this policy of keeping and retaining current smokers and getting smokers of other brands to switch to Liggett products, is that true for any particular age group or is that true regardless of age?

A. For Liggett, we -- we basically would have the same advertising program based on the brand that we advertise. There wouldn't really be any designation of age targets or things of that nature in the advertising.

Q. From the period 1960 to 1990 -- let's just take that 30-year period if we can -- were some of Liggett's brands targeted at particular groups in the population, such as women?

A. We had some brands. One of our -- one of our major brands is Eve, which does have a higher -- much higher degree of female smokers than male smokers, given the brand's name and the brand's image.

Q. And let's just run through the rest

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of the brands that existed in the period 1960 to 1990.

There was Lark?

A. Lark, that's correct.

Q. Chesterfield?

A. That's correct.

Q. L&M?

A. Yes.

Q. Any others?

A. We've mentioned Eve.

Q. Yes.

A. The only other cigarette during that time period that Liggett has done any advertising on is a brand named Pyramid, which is a discount brand, with the others being all full-price or premium brands.

Q. Let's leave Pyramid out of the discussion.

The Eve cigarette is at least partially intended for the female population?

A. That is correct.

Q. Does the Lark product have a niche or a group that it's focused at?

A. No. I would say Lark -- Lark would be more of a -- I guess, a gender-neutral brand.

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Q. How about Chesterfield -- and again, we're talking 1960 to 1990, all-totaled.
A. I think Chesterfield again is probably gender-neutral. There may be a slightly higher percentage of male smokers on that brand, given its nonfilter basis.
Q. And how about L&M?
A. I think L&M would also be gender-neutral.
Q. In terms of age groups, gender aside --
A. Uh-huh.
Q. -- looking at the Lark, Chesterfield and L&M product, are any of those three in the period 1960 to 1990, focused at the younger smoker versus the middle-aged smoker versus the older smoker?
A. I can speak very clearly from the period 1980 to 1990, and I can say the short answer to that would be no, those brands have all been smoked primarily by smokers probably 35 and older.
Q. From your review of the documents and drawing from your own experience, did Liggett in the period 1955 to '95 -- we have now expanded

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it by 10 years -- in that 40-year period, did Liggett have a policy in place not to advertise its products targeting children or young people under the age of 18?

A. I can assume from the period of 1955 to 1980 that they did voluntarily.

I can state unequivocally since 1980 and in the times I have been directly involved in the marketing and advertising of cigarettes, that we have taken steps to insure that we did not advertise cigarettes in front of youth.

Q. We'll get to what those steps are in a moment.

Why, at least for the period of time you're intimately familiar with from '80 to the present, why was that the policy at Liggett, not to market to young people under the age of 18?

A. The impression I had when I first started was that, quote, that was law, that that's something we just didn't do.

Q. Did you learn at any time that there was a policy against marketing to people under age because of the concern about the health effects of cigarettes?

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A. It was never brought to my attention that it was -- there was any health-related issues tied to those advertising policies.

The advertising policies that I was taught as I came into the business and as I worked in advertising were basically that, you know, smoking is an adult product, and that in marketing the brands, we again took steps to insure that we put our products in front of adult smokers, but took steps to try to insure that the product did not end up or was advertised in front of children.

Q. At any time from 1980 to the present, did you learn that part of the policy against advertising products to young people under the age of 18 had to do with whether cigarettes were habit-forming, produced a dependence or were addictive?

A. That was never a part of any of the discussions that I had.

Q. Okay. You mentioned steps were taken from and after the time you joined the company, and maybe they existed before, to affirmatively prevent children from getting at cigarette products through advertising.

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What was done?
A. In the advertising that I have been involved with, we took steps where we looked at the -- it was a magazine advertisement. We looked at readership levels of the circulation to insure that none of the publications that we considered had a high percentage of readership under the age of 18 or 21.
MR. GORDON: What was considered high?
BY MR. SILBERFELD:
Q. What percentage of readership?
A. I'm thinking now, I'm thinking if we had anything in double -- anything over 5 to 10 percent, that that was considered something, we would try to find a more suitable publication.
Q. Stopping there for a second, and I'm not trying to cut off your answer, but I just want to finish this one.
If there were magazines in this time frame, 1980 to, say, 1985 or '86, that had a readership that was roughly 10 percent under the age of 18, Liggett would not advertise in those magazines?
A. We would -- we would try to

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prevent getting into any of those types of circulations, yes.

Q. When you say you would try to prevent it, I don't understand that.

A. Well, what would happen, when we would run ads. We would have an advertising agency that would select magazines for us that would meet the criteria of the type of consumer that we would try to advertise our product to.

I will use a case, an example with Eve, we designated we were looking for smokers 40 years and over for that brand.

The agency would recommend "The following publications would be," quote, you know, "good buys," they might get a rate break, and at the time, we would look at the available publications and rely on the agencies to give us information back, you know, to insure that we weren't going into a publication that had, again, a high level readership of youth. Although the ad itself didn't necessarily have any targeting towards that youth, we wanted to insure that the publications they recommended had, again, a very low percentage.

We would -- you know, again, if

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they gave us five publications to choose from, and one of them had a -- what we viewed to be a high percentage of youth readership, we would select the other four.

BY MR. SILBERFELD:

Q. And the final decision about which ads went in which magazines was Liggett's?

A. That's correct.

Q. And was that true based upon your review of documents before you designed the company in 1980?

A. I'm not sure I could draw that conclusion based on the documents. I don't know what type -- what type of relationship Liggett had with its advertising people prior to that.

Q. Okay. That was the first step, the magazines and the readership levels.

What else was done in your time frame?

A. When -- when -- if we had any type of a program that involved outdoor advertising, we did an audit of where the sites were that were recommended from the advertising agencies, and would not do any advertising on billboards that were within close proximity, a thousand feet or so

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of schools or anyplace where it would be determined that youths would congregate, playgrounds, parks, things of that nature.

Q. We've talked about magazines, outdoor advertising.

Any other steps?

A. The other step we would take is, we would have mail-in programs available for our smokers, and anything that would come into the mail or that we would solicit through the mail, we had a signed affidavit where the consumer would have to, you know, sign their name, state their birth date and verify that they were over 21, and if we had any doubts that the person sending in the information was being truthful, we would physically call the person, you know, if we had any doubts whether it looked like a child's handwriting, or something like that.

Q. Or sent in in crayon?

A. Exactly, that would do it. We would kick those out.

Q. How long was the -- the affidavit that was tied to the mail-in program in place; do you know, at Liggett?

A. I'm sorry?

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Q. How long was that program in place to have affidavits?
A. I know it's basically been in place since 1990 when I was actually in the marketing department.
Q. Do you have any estimate of time for us as to how long it was in place before that, if at all?
A. I really couldn't say. I would assume that it had been in place for most of the 1980s.
Q. With respect to the placement of outdoor advertising, do you know how long that voluntary restriction on the placement of those billboards took place?
A. Again, I know from 1990, I know it's been in place, and I would assume it had been in place prior to that.
Q. Based on your review of the documents and your personal experience, did Liggett follow the policy that cigarette advertising shall not represent cigarette smoking as essential to social prominence, distinction, success or sexual attraction?
A. I believe so, yes.

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Q. Did Liggett follow -- and these are all from the Cigarette Advertising Code, I might add -- that part of the policy that cigarette advertising may use attractive, healthy-looking models, provided that there is no suggestion that their attractive appearance or good health is due to cigarette smoking?

Did Liggett follow that, even after it resigned from the code?

A. I believe so, yes.

Q. Did Liggett after its resignation from the code follow that part of the policy that said that "Cigarette smoking shall not depict as a smoker any person participating in or obviously just having participated in physical activity requiring stamina or athletic conditioning beyond that of normal recreation"?

Did Liggett do that.

A. Based on my knowledge, yes.

Q. For any year, 1990 to 1995, can you tell us what the advertising budget was for Liggett for the brands?

A. Early part of 1990, it was relatively small.

By "small," I mean probably less

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than 10 million dollars in total.

Liggett in 1992 had a fairly -- for a company its size, a fairly aggressive advertising budget of -- probably to the tune of 50 to 60 million dollars.

Since 1992, it's been back down in the range of less than 5 million dollars on an annual basis.

Q. In this same period of time, '90 to '95, has Liggett budgeted any monies for youth prevention; that is, to prevent young people from smoking or beginning smoking?

A. I'm not aware of any, no.

Q. Let's talk about some documents.

First, I would like to mark a transcript -- I'm sorry -- this is a document entitled "Suggested Guidelines for Industry Committee for the Review of Industry's Overall Independent Scientific Research Effort."

It's a Liggett-produced document bearing Bates number 0273333 through 3338.

(Plaintiffs' Exhibit 1346 was marked for identification.)

THE COURT REPORTER: Thirteen forty-six.

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BY MR. SILBERFELD:

Q. Mr. Shipe, this document doesn't bear a date, so I can't help with that, other than, on the fourth page of it, you'll see there's a reference to the mid-1970s under paragraph three.

Do you see that?

A. Yes.

Q. I'll represent to you that that's the only sort of time dating we have, other than, it's not very specific, but returning to the first page under number three, the heading "public relations"; do you see that, sir?

A. Yes, I do.

Q. Under paragraph A, it says, "Establishing credibility for the industry and its products with consumers and reinforcing consumers with respect to the smoking and health controversy."

Do you see that, sir?

A. Yes, I do.

Q. From your review of company documents, do you have an understanding as to what's referred to there by the term "reinforcing consumers"?

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A. No, not really. I mean, I -- it could mean many things.
Q. What do you believe it means?
MR. DIESETH: Objection.
MR. MARKS: Objection.
MR. SILBERFELD: That's okay. You can go ahead and answer, unless they tell you otherwise.
A. In -- reinforcing with regard -- if we're speaking advertising or public relations, it would be to, again, try to get your point or what you're trying to advertise in front of the consumer, make it visible to them.
MR. SILBERFELD: All right. Next let me mark a transcript of the Perry Como Show. It bears Bates numbers LG 0088956 to 8969.
(Plaintiffs' Exhibit 1347 was marked for identification.)
THE COURT REPORTER: Thirteen forty-seven.
BY MR. SILBERFELD:
Q. Mr. Shipe, is this one of the documents you looked at in the course of your preparation for today?
A. Yes, I believe it is.

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Q. On the third page of the transcript is the first commercial for this Perry Como TV show of October 14th, 1953.
Do you see that?
A. Yes.
Q. And in the second line, the announcer apparently says, "Chesterfield, choice of young America."
Do you see that?
A. Yes, I do.
Q. And later on, it says, "Chesterfield, the cigarette that's the choice of young America, is growing in popularity every day."
Do you see that?
A. Yes, I do.
Q. Do you know what was meant by the term "young America" as of this time?
A. No, I do not.
Q. Do you know if it referred to people over or under the age of 21, or both?
A. My assumption would be that it would be refer to people over 21.
Q. Do you know?
A. I don't know for a fact.

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Source: http://www.industrydocuments.ucsf.edu/docs/pxhd0001

Q. Second to the last line, it says, "Chesterfield, the cigarette that's low in nicotine, highest in quality."
Do you see that?
A. Yes, I do.
Q. Have I read that correctly?
A. Yes.
Q. Do you understand why it was important to Liggett as of this time to advertise or promote Chesterfield as a cigarette low in nicotine?
MR. MARKS: Objection.
A. No, I do not.
BY MR. SILBERFELD:
Q. In the course of preparing yourself for today, did you talk to anyone other than counsel, obviously?
Did you talk to any Liggett people?
A. I spoke with some people at Liggett to see if there would be anyone that would be more informed about some of these subjects than I would, and bottom line, there wasn't. There really isn't anyone at Liggett that is -- was involved in any of this that's still with the company today.

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Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/pxhd0001

Q. Did you ask anyone to try to search out an individual who may have retired or left the company who was around in this time frame in the '50s or the early '60s?
A. No, I did not.
MR. SILBERFELD: Next, I would like to mark another Perry Como Show transcript, Bates number LG 0076155 through 6162.
(Plaintiffs' Exhibit 1348 was marked for identification.)
THE COURT REPORTER: Thirteen forty-eight.
BY MR. SILBERFELD:
Q. Mr. Shipe, is this another transcript that you looked at before today?
A. Yes, I believe it is.
Q. On the third page is the first commercial for the program dated January 18th, 1954.
In the third to the last line, do you see the statement, "Chesterfield is highest in quality, low in nicotine"?
A. Yes, I do.
Q. If you'd turn over two more pages, you get to the transcript of the second commercial

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for the Perry Como television show of that date.
In the sixth line at the very end, it begins, "The low nicotine you want."
Do you see that, sir?
A. Yes, I do.
Q. Do you have any idea what that might refer to or why that's there?
A. My only assumption with that would be that, based in that time period, that they would have had information that would have indicated that consumers were either looking for or asking for products that were low in nicotine.
Q. Do you have any idea as to why consumers would want low nicotine cigarettes in this time frame?
A. No, I do not.
Q. All right. Next sentence says -- and tell me if I've read this correctly -- "A group of Chesterfield smokers have been examined by a doctor for almost two years. Forty-five percent of them on the average have been smoking Chesterfield for well over 10 years. The doctor's examination show no adverse effects to the nose, throat and sinuses from smoking Chesterfield."
Have I read that correctly?

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A. Yes, you have.
Q. Would you regard that as a health claim about Chesterfield cigarettes?
MR. DIESETH: Objection.
A. They -- in this context, it appears to be an advertising claim.
BY MR. SILBERFELD:
Q. About health?
A. About reactions to smoking.
Q. About the absence of adverse health effects?
MR. DIESETH: Objection.
A. I would say, you know, the ads is adverse effects to those parts of the body.
BY MR. SILBERFELD:
Q. And the second to the last page of this same exhibit, sir, there's a transcript of a spot about L&M filters.
Do you see that?
A. Yes, I do.
Q. And there's a statement seven and eight lines down about the alpha cellulose that was in the L&M filter as being entirely pure and harmless to health.
Do you see that, sir?

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Source: https://www.industrydocuments.ucsf.edu/docs/pxhd0001

A. Yes, I do.
Q. Would you regard that particular bit of advertising as a claim about the health effects of the L&M filter?
MR. MARKS: Objection.
A. I would say that they're making a statement about the alpha -- the alpha -- the product that's in the filter is what they are referring to there, I believe.
Q. All right. So, it's a health claim about the alpha cellulose, which is part of the L&M filter, right?
MR. DIESETH: Objection.
MR. MARKS: Objection.
A. Again, it's a claim. I'm not sure I know when this was written whether the intent was to make it a health claim or not.
MR. SILBERFELD: Next, I would like to mark another transcript of the Perry Como Show, Bates number LG 0078892 to 8928, February 10th, 1954.
(Plaintiffs' Exhibit 1349 was marked for identification.)
BY MR. SILBERFELD:
Q. Do you have 1349 before you?

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A. Yes, I do.
Q. Have you seen that before today?
A. I believe so. I saw several of these.
Q. On the third page -- we'll run through this rather quickly.
This is apparently a Como radio, first commercial of that date, and in the third line, it refers to "low nicotine."
Do you see that?
A. Yes, I do.
Q. And if you turn over three pages -- actually, if you turn just to the last page of the document.
A. Okay.
Q. There is an ad there that's part of the same program that reads in the third line, "Much less nicotine, an effective filtration, only L&M filters contain the miracle product alpha cellulose, absolutely pure, nonmineral, harmless to health," and then in the second to the last line of that paragraph, it says, "What the doctor ordered."
Do you see that?
A. Yes, I do.

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Source: http://www.industrydocuments.ucsf.edu/docs/pxhd0001

Q. Would a claim of this type, had it been made in the Cigarette Advertising Code period have been in keeping with or in violation of the Cigarette Advertising Code?

MR. DIESETH: Objection.

MR. MARKS: Objection.

A. I would believe that the Cigarette Advertising Code would have -- would not have made those types of claims in an ad.

BY MR. SILBERFELD:

Q. On the grounds that they were health claims?

MR. DIESETH: Objection.

A. Again, I think just because of the types of things that were in the code, it would have prevented that type of language from being used.

MR. SILBERFELD: Next, I would like to mark an L&M filter tip cigarettes ad. It bears Bates number TIMN 0019881.

(Plaintiffs' Exhibit 1350 was marked for identification.)

THE COURT REPORTER: Thirteen fifty.

BY MR. SILBERFELD:

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Q. Do you recognize Exhibit 1350?
A. Yes, I have seen this before.
Q. You saw this before today in preparation for today?
A. Yes.
Q. This is -- if the writing at the top is correct, an ad taken out of Life magazine April 5th, 1954; would you interpret it that way, sir?
A. Yes.
Q. Speaking of the L&M filter, it says in the second line after the words, "This is it. L&M filters are just what the doctor ordered."
Have I read that correctly?
A. Yes.
Q. And under "This you get," next to the drawing of Barbara Stanwyck, I guess -- doesn't look much like her, but she was younger then -- under number three, it says, "Much less nicotine, the L&M filter removes one-third of the smoke, leaves you all of the satisfaction."
Do you see that, sir?
A. Yes, I do.
Q. Do you know what the "all the satisfaction" refers to?

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MR. DIESETH: Objection.
MR. MARKS: Objection.
A. I would assume it refers to the flavor of the cigarette.
BY MR. SILBERFELD:
Q. And in the circle next to the pack near the bottom of the page, it says, again, "Light and mild, much more flavor, much less nicotine."
Do you see that?
A. Yes.
Q. Any idea what the "much less nicotine" there refers to or why it's there from an advertising standpoint?
A. Again, I would say that, without being privy to the information available at this time in 1954, I would make, just based on the ad, the assumption that the consumers had shown a preference for less nicotine and the people at Liggett and people working on the L&M brand had identified that as a benefit and were advertising to them.
MR. SILBERFELD: All right. Next in order, I would like to mark an ad bearing Bates number LG 0022761, single page.

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(Plaintiffs' Exhibit 1351 was marked for identification.)

BY MR. SILBERFELD:

Q. Do you recognize this document, sir?

A. Yes, sir.

Q. And you've seen it before, have you not?

A. Yes.

Q. It's one of the documents you looked at to prepare yourself for today?

A. Yes.

Q. Do you see the same sort of language that we talked about in the prior ad, "Rosalind Russell says L&M filters are just what the doctor ordered"?

A. Yes.

Q. And then there's a personal testimonial with the signature of Rosalind Russell.

Do you see that?

A. Yes.

Q. And then there's a reproduced copy of a letter from apparently a scientist at Liggett & Myers Tobacco Company.

Do you see that?

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A. Yes, I do.
Q. And then it says, again in the circle, "Much more flavor, much less nicotine."
Do you see that?
A. Yes.
Q. To your knowledge, Mr. Shipe, was Liggett & Myers or Liggett at any time a member of The Tobacco Institute?
A. I'm not aware if they were or not, to be honest with you.
MR. SILBERFELD: All right. Let me mark as next in order a letter from Bowman Gray on the letterhead of R.J. Reynolds Tobacco Company, July 1, 1964, bears Bates number LG 431767 to 769.
(Plaintiffs' Exhibit 1352 was marked for identification.)
BY MR. SILBERFELD:
Q. Mr. Shipe, if I could direct your attention to the second page of the document, have you seen this document before?
A. I believe so, yes.
Q. It's a letter to a Congressman in July of 1964, which at the bottom of the page says that "the cigarette manufacturers are taking steps

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promptly to effectuate the advertising code."
Do you see that, sir?
A. Yes.
Q. Does that help you place in time when it was that the advertising code was first started?
A. Yes.
Q. And to your knowledge, did Liggett subscribe to the code from and after 1964?
A. I believe so, but I'm not entirely positive of that.
MR. SILBERFELD: I would like to mark as next in order a memorandum dated January 10th, 1968, bears Bates number LG 2008504.
(Plaintiffs' Exhibit 1353 was marked for identification.)
BY MR. SILBERFELD:
Q. Do you recognize this document, Mr. Shipe?
A. Yes, I do.
Q. Is this one of the documents you looked at to prepare yourself?
A. Yes, it is.
Q. All right. In general terms, this memorandum is from the general counsel, the lawyer

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for Liggett?
A. Correct.
Q. Do you know who FPH refers to?
A. No, I do not.
Q. Does the name "Haus" have any meaning to you or does that refresh your memory in any way?
A. No, not a name familiar to me.
Q. The substance of the memorandum talks about advertising for the Lark brand and how that fits with the Cigarette Advertising Code.
Is that a fair summary of this?
A. Yes.
Q. It provides in the first two paragraphs that the general counsel feels obligated to make certain observations, having been shown the television and print ads for the Lark brand.
Do you see that?
A. Yes.
Q. And he says in the second paragraph there that the ads apparently are not subject to the Cigarette Advertising Code; right?
A. Yes.
Q. And he goes on to say, "These ads

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have implications which go beyond the present advertising of our competitors, particularly in the area of charcoal filters."

Do you see that?

A. Yes, I do.

Q. And in the third line of the next paragraph, he writes, "We are clearly implying health benefits for this brand."

Do you see that?

A. Yes, I do.

Q. And in the next paragraph, he writes in the last sentence, "I do not believe that the statements in the final copy will be false, but the area of implications which can be read into the ad is a troubling one."

Do you have an understanding as to what was referred to by that language that I just read?

A. Yes.

Q. What is that?

A. That -- that the ad in question is making some type of a product benefit statement about the charcoal filtration, but there may be from a -- from a -- from a copy standpoint, language in that ad that could have dual meaning

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or be interpreted in more than one way, and he's obviously expressing a concern and wishing to take a more conservative approach to eliminate any misinterpretation of what the ads' claims may be.

Q. There's always some concern in advertising, is there not, that by saying certain things or writing certain things, a company doesn't make warranties; right?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. And what is your understanding -- and I'm not asking for a legal conclusion now -- but what is your understanding of the difference between making a claim in an ad and making a warranty?

MR. DIESETH: Objection.

MR. MARKS: Objection.

A. I think in advertising that there's is a certain amount of puffery that goes on in any ads, "Ours is better. Ours is the best. Ours is number one," things of that nature, but if you're going to be very specific in an ad and state something unequivocally, then you're going to have to have the facts to back that up -- statements to

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back that up, so I would balance it between those two factions.

BY MR. SILBERFELD:

Q. With regard to the television and print ads for the Lark brands which are mentioned here in this memo, did you ever see those, the ads themselves?

A. I don't know specifically which ads are being referred to here. I have seen some of the old Lark advertising, but I'm not sure if I can make the connection as far as which one they are speaking to here.

Q. You've seen ones that were actually published?

A. No. I have seen -- in the information made available to me, there were some copy for old Lark ads that were in various stages of development.

Q. But not final, printed ones; is that the idea?

A. Yes.

Q. Did you see in there any indication in the drafts of the ads that the ads implied a potential health benefit?

A. No.

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MR. SILBERFELD: Next, I would like to mark a three-page document, Bates number LG 0395950 to 52.

(Plaintiffs' Exhibit 1354 was marked for identification.)

BY MR. SILBERFELD:

Q. Mr. Shipe, Exhibit 1354 is a memo dated March 18th, 1969, from Mr. Southard to a Mr. White; is that right?

A. Yes.

Q. Have you seen this document before today?

A. Yes, I have.

Q. In substance, it refers to an ad which was submitted to the Cigarette Advertising Code; correct?

A. Yes.

Q. It was a Liggett ad that was submitted for approval to the code?

A. That's correct.

Q. And specifically, to Governor Meyner, M-E-Y-N-E-R; right?

A. Yes.

Q. They reviewed it; right?

A. Yes.

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Q. And they gave you -- or Liggett, rather, as it indicates in the second paragraph, "an unequivocal rejection based upon the age of the principals represented in the TV and print comprehensives, as well as the intimate nature of their physical relationship."

Do you see that?

A. Yes, I do.

Q. Have you ever seen the ad that's being talked about in this memo?

A. No, I have not.

Q. Just refer you to one thing in the next paragraph.

Do you know who Mr. Southard was as of 1969?

A. I believe, based on some other documents that I have seen, that he was either a director and/or vice president of marketing for Liggett during this period of time.

Q. He writes in that third paragraph, "While I felt that there was considerable room for debate on the subject of the so-called sex and romance format as described by the Governor, I did not press this point due to our rather obvious violation of the youth provisions."

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Do you see that?
A. Yes.
Q. Does that indicate to you that at least this draft of the ad that was discussed in this memo showed models that were younger than the age called for by the Cigarette Advertising Code?
A. It would appear that they -- the way this is written -- again, without seeing the ad, I would have to assume that it would at least appear like they were younger. Whether or not they were or not, I don't know.
Q. If I could direct your attention to the last page -- actually, it begins on the page before, I apologize.
On the second page at the bottom where it says, "Recommendation," you understood that the recommendation being talked about here was a recommendation in light of the criticisms and comments made by Governor Meyner in the Cigarette Advertising Code about this particular ad?
A. Yes.
MR. DIESETH: Objection.
BY MR. SILBERFELD:
Q. That's your take of this? You

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understand that from this memo?
A. I understand it's the recommendation that Mr. Southard is making to Mr. White regarding this campaign.
Q. Okay. He starts by saying, at the bottom of the second page, "This campaign is so strongly right for L&M that it is difficult to consider any form of compromise, such as moving to a secondary campaign."
Do you see that?
A. Yes, I do.
Q. And then he makes the suggestion, which is number one, and then number two at the top of the third page, he writes, "Failing in the above and perhaps concurrently, I would like to go to Mr. Harrington with a request to either resign from the code or to act against Article 4, Section 1, paragraph D, much the same way as the health provisions deleted earlier."
Do you see that?
A. Yes.
Q. And he goes on to say, "It is my feeling that unless new advertising with the proper message and empathy is executed and placed into the media as soon as possible, we will have

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great difficulty in getting the volume requirement for 1969 of" -- is that seventeen billion units?

A. That is correct.

Q. Seventeen billion, seven hundred and fifty million units and the required margin contribution of thirty-five million, two hundred and thirty thousand dollars.

Have I read that correctly?

A. Yes, you have.

Q. What is a "margin contribution" that's referred to there?

A. I believe that would be the -- the money available to go to the bottom line for the L&M brand based on those units after all sales and marketing expenses would be taken out.

Q. So, margin contribution is another way of saying "profit"?

A. Well, there would be other things that would come out of it before it became profit, but from a sales and marketing language, it would be the money the sales and marketing contribution would make to the bottom line.

Q. All right. Does this memo refresh your memory in any way that it was about 1969 or thereabouts that Liggett resigned from the

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Cigarette Advertising Code?

A. Yes. That appears to be the time frame. I remember seeing it in other documents.

MR. SILBERFELD: Let me mark as next in order a two-page document dated October 9th, 1969, bears Bates number LG 2004712 and 13.

(Plaintiffs' Exhibit 1355 was marked for identification.)

BY MR. SILBERFELD:

Q. Have you seen Exhibit 1355 before today, sir?

A. Yes, I have.

Q. This is another company document you looked at to prepare yourself for testimony?

A. Yes, it is.

Q. And this is from FPH, who I think we agreed earlier was general counsel, although we don't know the individual's name; right?

A. That's correct.

Q. And who is Mr. McAllister, the recipient; do you know?

A. I do not know who that individual is.

Q. Okay. In a general sense, is it a fair statement that this memo is the resignation

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of Liggett from the Cigarette Advertising Code in or about October, 1969?

A. Yes. I mean, I believe it's -- it's the letter by which Liggett showed its intent to resign.

Q. All right. Let me turn for just one series of questions -- and then we'll be finished -- to young people.

In talking about magazines earlier on, you mentioned a readership figure of around 10 percent, give or take a little, that in the context of saying that Liggett would not place ads in magazines that had a readership of young people under the age of 18 above that figure.

With respect to television advertising when television advertising was permitted, do you know whether Liggett had a similar policy, sir?

A. Not aware of any policy that they had with regard to that.

MR. SILBERFELD: Let me mark next in order a three-page document, "Nielsen TV Audience Composition, October, 1965," bears Bates number 500006999 to 500007001.

(Plaintiffs' Exhibit 1356 was

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marked for identification.)
BY MR. SILBERFELD:
Q. Before talking about this one directly, Mr. Shipe, is it true that Liggett for all time that it advertised wanted affirmatively to prevent underage smoking by its advertising?
A. I'm sorry, could you repeat the question?
Q. Sure. Is it true for all of the time that Liggett advertised, either on radio, television, print ads, that it affirmatively wanted to design its advertising such as -- so that, I'm sorry, young people would be discouraged from smoking or wouldn't be targeted in the advertising?
A. I know that's been Liggett's intent since I have been involved with the company. I can only assume that it would also have been their intent prior to that.
Q. Can you say affirmatively that that was the policy before 1980?
A. I'm not -- honestly, I'm not aware of the exact policy prior to 1980. I can assume that it was.
Q. Do you believe that it was

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Liggett's policy to design its advertising, both before and after 1980, to insure that smoking would be viewed as an adult custom?

A. I think that has been Liggett's intent, yes.

Q. You have 1356 in front of you now, sir?

A. Yes, I do.

Q. It's a three-page document, and I will represent to you came from RJR, but it is a Summary Comparison of the Nielsen TV Audience Composition by television program, by tobacco company.

Do you see that?

A. Yes, I do.

Q. Have you seen this document before?

A. Yes, I have.

Q. Was this one of the documents you looked at to prepare yourself?

A. Yes, it is.

Q. Oh, terrific. Then you understand that what they are describing here is by tobacco company, the placement of television advertising and the percentage of total viewers of these programs based on the Nielsen numbers that were

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under the age of 18.
Do you see that?
A. Yes, I do.
MR. DIESETH: Objection.
BY MR. SILBERFELD:
Q. On the second page, there's a section of Liggett & Myers.
Do you see that?
A. Yes.
Q. And Liggett & Myers, at least in this period of time in October of 1965, television ads were placed on nine programs?
MR. DIESETH: Objection.
BY MR. SILBERFELD:
Q. Have I got that right, sir?
A. I don't know whether it was only nine. There's nine on here, it appears like.
Q. Right. At least what we see here, there's nine.
And with the exception of The Tonight Show, the percentage of total viewers under the age of 18 is in double figures for every program that Liggett & Myers advertised on; is that true?
MR. DIESETH: Objection.

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MR. MARKS: Objection.
A. According to this statement, these numbers, yes, that's accurate.
BY MR. SILBERFELD:
Q. And for the I Dream of Jeannie show, the third one down, the percentage of total viewers under 18 years of age was 48 percent, almost half; do you see that?
MR. DIESETH: Objection.
MR. MARKS: Objection.
A. Yes.
BY MR. SILBERFELD:
Q. With respect to any television show listed here on this document, for any company, is there an under-18 viewership higher than 48 percent?
MR. DIESETH: Objection.
A. According to this Nielsen information, it appears to be the only one at 48.
BY MR. SILBERFELD:
Q. It's the highest, of all of the companies and all of the shows for that one period of time?
A. For all the shows.
Q. Is that right?

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MR. DIESETH: Objection.
MR. MARKS: Objection.
MR. SILBERFELD: I don't know if we heard an answer.
A. I'm sorry, according to this information, yes, it appears to be the highest-rated one.
MR. SILBERFELD: Thank you. That's all I have.
MR. MARKS: That's it.
(Deposition recessed at 1:30 o'clock p.m.)

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C E R T I F I C A T E

I, Sue A. Terry, RPR/CRR, hereby certify that I am qualified as a verbatim shorthand reporter; that I took in stenographic shorthand the testimony of Liggett Group (STEVEN D. SHIPE) at the time and place aforesaid; and that the foregoing transcript is a true and correct, full and complete transcription of said shorthand notes, to the best of my ability.

Dated at New York, New York, this 29th day of September, 1997.

_____

SUE A. TERRY, RPR/CRR

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I N D E X

EXHIBITS	DESCRIPTION	MARKED
Plfs. Ex. 1346	Suggested Guidelines for Industry Committee for the Review of Industry's Overall Independent and Scientific Research Effort, Bates 0273333-3338	41
Plfs. Ex. 1347	Transcript of Perry Como Show, Bates 0088956-8969	43
Plfs. Ex. 1348	Transcript of Perry Como Show, Bates LG 0076155-6162	46
Plfs. Ex. 1349	Transcript of Perry Como Show, Bates LG 0078992-8928	49
Plfs. Ex. 1350	Advertisement, Bates TIMN 0019881	51
Plfs. Ex. 1351	Advertisement, Bates LG 0022761	54
Plfs. Ex. 1352	Letter, Bowman Gray to R.J. Reynolds, Dated 7-1-64, Bates LG 431767-769	55
Plfs. Ex. 1353	Memo Dated 7-10-68, Bates LG 2008504	56
Plfs. Ex. 1354	Memo Dated 3-18-69, Southard to White, Bates 0395950-52	61
Plfs. Ex. 1355	Letter from FPH Dated 10-9-69, Bates LG 2004712-13	66
Plfs. Ex. 1356	Nielsen TV Audience	

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Composition Dated
10-65, Bates
500006999-7001 67

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